

The Wisconsin Department of Transportation adopts an order to repeal TRANS 117.02(2)(c) and (d), 117.03(2)(e) and (L), (3)(c), (h) and (i), 117.05(4)(d), 117.08(1) to (4) and 117.09(3); amend TRANS 117.025(8), 117.03(2)(f) and (k), (3)(f) and (5)(a)1., 117.05(5), 117.08(5); and create TRANS 117.03(3)(g)(note), relating to CDL occupational licenses

ORDER ADOPTING RULE

Analysis Prepared by the Wisconsin Department of Transportation

Statutes interpreted: ss. 343.10, Stats.

Statutory authority: s. 343.10, Stats.

Explanation of agency authority: The Department is authorized to issue occupational licenses under s. 343.10, Stats., to allow a person whose operating privileges are suspended or revoked to engage in an occupation, homemaking or study. Only licenses revoked under Chapter 343, ss. 767.303, 938.34(14q), 943.21(3m) or 961.50, Stats., are eligible for an occupational license.

Related statute or rule: Chapter 343, ss. 767.303, 938.34(14q), 943.21(3m) and 961.50, Stats.

Plain Language Analysis: This rule modifies ch. Trans 117, relating to occupational licenses. The Motor Carrier Safety Improvement Act of 1999 (MCSIA) forbids states from knowingly issuing a temporary license permitting a person to drive a commercial motor vehicle (CMV) while their driving privileges are revoked, suspended or cancelled, per CFR 384.210. Following federal requirements, the legislature eliminated statutory authority for CDL occupational licenses, effective September 30, 2005, by amendment to s. 343.10(2)(c), Stats., 2003 Wis. Act 33. These amendments to ch. Trans 117 as required by the statutory change, remove all of the references to commercial occupational driver's licenses in the Department's occupational licensing rule.

References to s. 346.65(6), Stats., throughout the chapter are no longer correct. The language allowing the courts authority to order an ignition interlock device is now found in s. 343.301(1), Stats. The relevant provisions of ch. Trans 117 are to be amended accordingly. The rule also makes clear that any statutorily-mandated restriction will be imposed on any occupational license.

The requirement that a person surrenders all other license documents or certify they are lost is being repealed. In practice, the Department does not get these from most drivers even if requesting them.

Summary of, and Preliminary Comparison with, Existing or Proposed Federal Regulation: As of September 30, 2005, federal law prohibits states from issuing an occupational license to operate a commercial motor vehicle. (49 CFR 384.210) 2003 Wis. Act 33 and this rule making bring Wisconsin into compliance with that requirement.

Comparison with Rules in Adjacent States: As of September 30, 2005 all states are prohibited from issuing an occupational license to operate a commercial motor vehicle. (49 CFR 384.210). This includes all adjacent states. Thus, Wisconsin law will be identical to all other states on this point. No state will issue CDL occupational licenses.

Summary of Factual Data and Analytical Methodologies Used and How the Related Findings Support the Regulatory Approach Chosen: The Department will not issue occupational licenses to operate a commercial motor vehicle after September 30, 2005 (s. 343.10(2)(c), as amended by 2003 Wis. Act 33). Failure to comply would result in the loss of federal highway funding.

Effect on Small Business and, If Applicable, Any Analysis and Supporting Documentation Used to Determine Effect on Small Businesses: This rule could impact small businesses that employ commercial drivers. Any commercial driver who loses his or her driving privileges may be eligible for a Class D occupational license, however, they will not be able operate a commercial motor vehicle. In 2004, the Department issued 1,088 occupational licenses for commercial drivers. None of these drivers can be issued or hold an occupational license after September 30, 2005.

If a driver cannot operate a commercial motor vehicle, and it is part of their job duties to do so, the employee must be reassigned to duties that do not require the operation of a commercial motor vehicle. As an alternative, the small business may choose to terminate the employee for being unable to perform his or her job duties and hire someone else with a valid commercial driver's license.

The Department will enforce the rule by not issuing occupational licenses to operate commercial motor vehicles after September 30, 2005.

Agency contact person: You may contact the Department's small business regulatory coordinator, Reggie Newson, by phone at (608) 264-6669, or via e-mail at reggie.newson@dot.state.wi.us.

Fiscal Effect and Anticipated Costs Incurred by Private Sector: Small businesses might be adversely affected if the number of qualified, available drivers under MCSIA is reduced. Employers may find that they have to pay drivers a premium wage in order to continue to provide their current level of service.

The National Compensation Survey of Milwaukee-Racine, conducted in October 2003, found that transportation and material moving employees (includes truck drivers and industrial truck and tractor equipment operators) earned an average of \$18.00 per hour. If 10% premium were applied to retain qualified, available drivers under MCSIA, this would cost a small business an additional \$3744 per year. $\$18.00 * 10\% = \$1.80 * 2080 \text{ hours} = \3744

The predicted fiscal impacts of the federal regulation, which imposed these new requirements upon states, were published in the Federal Register at Volume 67, No. 147, July 31, 2002, p. 49472. This federal register is available online at:
http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=2002_register&docid=02-18457-filed.pdf.

Copies of Rule: Copies of the rule may be obtained, without cost, by writing to Erin Egan, Department of Transportation, Division of Motor Vehicles, Bureau of Driver Services, Room 351 Hill Farms, P.O. Box 7920, Madison WI 53707-7920. You may also contact Ms. Egan by phone at (608) 266-1449, or via e-mail at erin.egan@dot.state.wi.us.

TEXT OF RULE

SECTION 1. Trans 117.02(2)(c) and (d) are repealed.

SECTION 2. Trans 117.025(8) is amended to read:

Trans 117.025(8) If a petition is granted by the court, the department shall receive the court's order and treat it and the appellant's petition to the court as an application for occupational license. The department shall issue an occupational license to the person, subject to any restrictions ordered by the court or required under s. Trans 117.03(3), unless issuance of an occupational license to the person is prohibited under s. Trans 117.03(2). ~~If the person is ineligible for a CDL-occupational license but is eligible for a class D or M license, the department may issue a class D or M license to the person, but may not authorize privileges to operate class A, B or C vehicles on the license.~~

SECTION 3. Trans 117.03(2)(e) is repealed.

SECTION 4. Trans 117.03(2)(f) and (k) are amended to read:

Trans 117.03(2)(f) The person has installed any ignition interlock devices the person has been ordered to install as a condition of an occupational license or pursuant to a court order under s. ~~346.65(6)~~ 343.301(1), Stats.

(k) The person has not filed more than one petition with a circuit court for an occupational license since the last date on which the department issued ~~a basic, commercial or an~~ occupational license to the person.

SECTION 5. Trans 117.03(2)(L) and (3)(c) are repealed.

SECTION 6. Trans 117.03(3)(f) is amended to read:

Trans 117.03(3)(f) No occupational license may authorize the operation of a school bus or commercial motor vehicle.

NOTE: ss. 343.10(2)(c) and 343.10(5)(a)1.

SECTION 7. Trans 117.03(3)(g)(note) is created to read:

Trans 117.03(g)(note) Note: ss. 343.10(1)(a) and (5)(a)1.

SECTION 8. Trans 117.03(h) and (i) are repealed.

SECTION 9. Trans 117.03(5)(a)1. is amended to read:

Trans 117.03(5)(a)1. The person is convicted of an offense for which an ignition interlock is ordered to be imposed on the person's vehicle under s. ~~346.65(6)~~ 343.301(1), Stats.

SECTION 10. Trans 117.05(4)(d) is repealed.

SECTION 11. Trans 117.05(5) is amended to read:

Trans 117.05(5) An application for occupational license submitted by a person who has been ordered to install an ignition interlock device ~~as part of a criminal~~

sentence under s. ~~346.65(6)~~ 343.301(1), Stats., shall include a copy of the order and proof of installation.

SECTION 12. Trans 117.08(1) to (4) are repealed.

SECTION 13. Trans 117.08(5) is amended to read:

~~Trans 117.08(5) Notwithstanding subs. (1) to (4) or any expiration date stated on the face of an occupational license, an~~ An occupational license shall expire 2 working days after the end of all suspensions and revocations of the driver's operating privilege in effect at the time the occupational license was issued.

SECTION 14. Trans 117.09(3) is repealed.

(END OF RULE TEXT)

Effective Date. This rule shall take effect on the first day of the month following publication in the Wisconsin Administrative Register as provided in s. 227.22(2)(intro.), Stats.

Signed at Madison, Wisconsin, this ____ day of July, 2005.

FRANK J. BUSALACCHI
Secretary
Wisconsin Department of Transportation